

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SUBREGION 34

FRESHBEV CRAFT JUICERY

and

**UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 371, AFL-
CIO, CLC**

Case No.: 01-RC-179057

Request for Review of the Regional Director's Actions

Now comes FreshBev Craft Juicery, the charged party in the above captioned case and files this Request for Review of the Regional Director's actions in NLRB Case No. 01-RC-179057

On July 19, 2016, FreshBev Craft Juicery received notification that the petition in 01-RC-179057 was being held in abeyance pending the investigation of the following unfair labor practice charges: Cases 01-CA-180013, 180017, 180197, 180348, and 180350. As a result of this decision, the election scheduled for July 21, 2016 was cancelled. Pursuant to the National Labor Relations Board's Rules and Regulations, FreshBev is requesting a review of this action.

As stated by Section 102.71(b):

Where the regional director b) Where the regional director dismisses a petition or directs that the proceeding on the petition be held in abeyance, and such action is taken because of the pendency of concurrent unresolved charges of unfair labor practices, and the regional director, upon request, has so notified the parties in writing, any party may obtain a review of the regional director's action by filing a request therefor with the

Board in Washington, DC, in accordance with the provisions of paragraph (c) of this section. A review of an action of a regional director pursuant to this subsection may be granted only upon one or more of the following grounds:

(3) The regional director's action is, on its face, arbitrary or capricious.

With regard to the instant matter, the regional director's action was arbitrary, as well as capricious

At 3:36 p.m. on July 19, 2016, less than 48 hours before voting was scheduled to begin. FreshBev received notice that as a result of five unfair labor practice charges, the petition in 01-RC-179057 would be held in abeyance. At the time this notice was given, FreshBev had not even been notified of the final two charges—let alone provided an opportunity to respond to even one of the charges. Indeed, at no point in the entire process did any representative of the Board ask FreshBev or its attorneys' for any information regarding any of the unfair labor practice charges filed by the Union. Given that the first three charges were filed on July 12, 13, and 15, respectively, there was certainly time to seek out the Company's position before making a decision to stop the election.

On July 20, 2016, the Regional Director provided FreshBev with additional information regarding his decision to block the processing of the representative petition. According to the Regional Director's letter, this decision was based on "the evidence submitted...by the Petitioner, as well as the information set forth in your position letter." As of July 29, 2016, FreshBev has not provided the Regional Director, or any other NLRB officer, with a position letter regarding any of the five pending charges. Likewise, FreshBev has not had an opportunity to discuss these charges with the Regional Director, or provide any statements beyond a general denial. As noted above, this decision was made before the Board had even transmitted the final

two charges to FreshBev or its attorneys. By failing to allow FreshBev to provide any response to these charges, let alone a position letter (despite the Board's statement to the contrary), the Company believes that the Regional Director has acted arbitrarily and capriciously.

Had FreshBev been allowed to address the five unfair labor charges filed by the petitioner, it would have been able to provide the following critical information:

Case 01-CA-180013: On June 27, 2016, union representatives, including UFCW Local 371 business agent Jessica Petronella, trespassed on FreshBev's property. They entered through the company's gate, and were soliciting the employees. FreshBev's Vice President of Operations, Bill Mulroy, was alerted that strangers were trespassing on Company property, and had knocked one of his employees to the ground. As VP of Operations, Mr. Mulroy had a responsibility to investigate reports of strangers trespassing on company property and knocking a FreshBev employee to the ground. The Union representatives identified themselves and then refused Mr. Mulroy's request to leave FreshBev's private property. At no time were any employees, engaged in union activity or otherwise, surveilled By Mr. Mulroy or any other FreshBev officers, agents or representatives. The Company's version of these events are supported by video tape made by the Company's security system.

Case 01-CA-180017: On June 11, 2016, FreshBev did not grant a wage increase to employees. Assuming the Union meant July 11, 2016, FreshBev also did not grant a wage increase to employees. Rather, it implemented a standardized wage structure. This structure was not an increase for all employees, nor was it designed to be so. Rather, the standardized wage structure was implemented to ensure that all wages were commensurate with roles and responsibilities.

Crucially, this new wage structure was announced several weeks before the Union's June 27 petition, and, in accordance with well-settled NLRB precedent, is therefore permissible. The Company has a number of internal documents supporting its position, including several emails with time and date stamps .

Case 01-CA-180197: This charge alleges that on July 7, 2016, FreshBev officers, agents, and representatives committed assaults against union representatives in the presence of employees and/or to the knowledge of employees. The Company has no knowledge of any such incident. No reports were filed regarding this incident, nor has a single employee mentioned any incident that even remotely resembles this charge. Furthermore, no members of law enforcement have contact FreshBev or any of its officers or agents or representatives regarding these alleged multiple "assaults."

Case 01-CA-180348: FreshBev categorically denies that on June 27, 2016—or any date for that matter—polled workers support for the union by having the packing supervisor collect signatures of employees who are not in favor of the union. On the date in question, a FreshBev employee, Amanda Duquette, did create, of her own accord and initiative, an informal letter requesting Local 371 to withdrawal its petition. Ms. Duquette is not a supervisor, and was on the voting list for the election.

Case 01-CA-180350: FreshBev denies that it has been making promises of a regular, improved, eight-hour schedule if people vote against the union. In October 2015, FreshBev, in order to meet a sudden spike in demand, moved a number of its employees to 12-hour shifts. A number of employees were in favor of the change; a number were not. Almost immediately, a conversation began about when employees could return to regular, 8-hour shifts—a conversation that continued into 2016. Months before the Union petition was filed, the Company was already

preparing to return to its regular 8-hour shifts. Indeed, Bill Mulroy's primary tasks as the new VP of Operations was to facilitate this change. And, again well before the petition was filed, the Company altered its hiring practices, bringing on a number of new employees with the goal of bringing back the third shift. The Company has a number of internal documents that support this position.

Given the fact that FreshBev was never given an opportunity to address any of these issues, the Regional Director's decision to postpone the election was arbitrary and capricious. FreshBev is confident that had it been allowed to provide a position statement regarding each of the above-noted charges, the Regional Director would have, at the most, chosen to impound the ballots after the election. Instead, he failed to allow FreshBev to provide evidence refuting the Union's vague and frankly, outrageous, charges, before imposing a draconian punishment.

In light of these facts, FreshBev respectfully requests the Regional Director to rescind his decision to hold the election in abeyance and move forward with the petition as soon possible

FRESHBEV CRAFT JUICERY

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Dated this 1st day of August, 2016.

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REGION 1

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Request for Review of the Regional Director's actions has been served by electronic mail this 1st day of August, 2016 to the following:

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